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7 GUARDSMARK, LLC

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13
14 JOHNNY MCFARLAND, on behalf of himself
and others similarly situated,

15 Plaintiff,

16 vs.

17 GUARDSMARK, LLC, and Does 1 through 50,
18 inclusive,

19 Defendants.
20

Case No. 07-03953 PJH

**[PROPOSED] ORDER GRANTING
GUARDSMARK, LLC'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Date: February 13, 2008

Time: 9:00 a.m.

Courtroom: 3, 17th Floor

Judge: Honorable Phyllis J. Hamilton

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[Proposed] Order Granting Guardsmark, LLC's Mot. For
Partial Summary Judgment; Case No. CV 07-03953 PJH

1 This matter is before the Court on Defendant Guardsmark, LLC's ("Guardsmark") Motion
2 for Partial Summary Judgment. Guardsmark and Plaintiff seek resolution of the following purely
3 legal question central to the instant suit: whether "on-duty meal periods" are, as Plaintiff
4 contends, not really meal periods at all, or whether, as Guardsmark submits, "on-duty meal
5 periods" are in fact a type of meal period. For the reasons stated below, the Court finds that on-
6 duty meal periods do not constitute waived meal periods. Accordingly, Guardsmark's Motion for
7 Partial Summary Judgment is GRANTED.

8 Plaintiff Johnny McFarland works as a security guard for Guardsmark. Neither party
9 disputes that Plaintiff has expressly agreed to take on-duty meal periods, and that he is paid for
10 any such on-duty meal periods that he takes. However, Plaintiff argues that Guardsmark failed to
11 provide him with legally sufficient *second* meal periods on shifts exceeding ten hours. Plaintiff
12 contends that California law precludes an employer from providing second on-duty meal periods
13 to satisfy its second meal period obligation. Guardsmark disputes this position.

14 California Labor Code section 512 generally requires that employees working shifts of
15 more than five hours be provided one meal period, and that employees working shifts of more
16 than ten hours be provided a second meal period. In addition to setting this general requirement,
17 section 512 also states that employees can "waive" their rights to meal periods subject to certain
18 limitations, *i.e.*, employees can waive their first meal periods if their work days do not exceed six
19 hours in total, and they can waive their second meal periods if their work days do not exceed
20 twelve hours and the first meal period was not waived. In essentially identical terms, the
21 associated California regulations (the "Wage Orders") state that employees must be provided
22 meal periods if they work in excess of five hours, but that they can waive such meal periods if
23 their work day does not exceed six hours. *See* Cal. Code Regs., tit. 8, § 11040(11) (2007).
24 Critically, however, in addition to establishing these limitations on the outright waiver of meal
25 period rights, these regulations separately establish that an employer can satisfy its obligation to
26 provide meal periods by providing on-duty meal periods, if those on-duty periods are consistent
27 with the nature of the work, compensated, and expressly consented to by the employee. *See id.*

This issue can therefore be resolved simply by looking at the plain language of the relevant statute and regulation. *See Welch v. Oakland Unified Sch. Dist.*, 91 Cal. App. 4th 1421, 1431 (2001) (“[I]f the language [of the statute] is clear, there can be no room for interpretation, and effect must be given to its plain meaning.”). Here, the plain language contained in section 512 and the Wage Order No. 4 is unambiguous: An on-duty meal period is a type of meal period that can satisfy an employer’s meal period obligation; it is not a waiver. Accordingly, because on-duty meal periods are meal periods, they are not subject to the same limitations as waived meal periods. This conclusion is also supported by a Memorandum from the State Labor Commissioner and her Chief Counsel stating that “[t]he term ‘meal period’ includes both the on-duty paid and off-duty unpaid variety.” *See* Memorandum “*Understanding AB 60: An In Depth Look at the Provisions of the ‘Eight Hour Day Restoration and Workplace Flexibility Act of 1999,’*” (Dec. 23, 1999).

Finally, because the nature of the work performed by an employee does not change over the course of a single shift, it makes no sense to permit the *first* meal period to be on duty, but then require the *second* meal period to be taken off duty. Indeed, if an *off*-duty meal period were consistent with the employee’s duties, there would be no need (or legal basis) for an *on*-duty meal period to be taken in the first place. *See* Cal. Code Regs. tit. 8 §§ 11040(A), 11140(11). As such, Plaintiff’s argument that second meal periods must be off duty if the first meal period was on duty runs counter the underlying purpose of the regulation.

Accordingly, Guardsmark’s Motion for Partial Summary Judgment is GRANTED.

IT IS SO ORDERED.

Dated: _____, 2008

Honorable Phyllis J. Hamilton
United States District Court Judge